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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

ELEANOR FORESTA et al.,  
  
Plaintiffs and Appellants,

v.

BOARD OF DIRECTORS OF  
HOMESTEAD PARK et al.,  
  
Defendants and Respondents.

H033000  
(Santa Cruz County  
Super. Ct. No. CV157973)

The instant case concerns a dispute over an area of land within a mobilehome park. Appellants Eleanor Foresta, and her live-in caregiver, Robert Prete wished to widen the driveway area adjacent to their mobilehome to provide better wheelchair access for Foresta, who is disabled. Foresta and Prete filed a complaint in Santa Cruz County Superior Court against Homestead Park (Homestead), the mobilehome park where they lived, and their neighbors at Homestead whose space abuts the area of land in dispute, Lillian Frazee and Ruth Dawkins.

Following sustaining Homestead and Frazee and Hawkins's demurrer to appellants' complaint with leave to amend as to some causes of action, and without leave to amend as to others, the trial court eventually dismissed the action, and entered judgment in favor of Homestead, Frazee and Dawkins.

Appellants appeal the court's entry of judgment in this case, asserting the court erred in sustaining the demurrer, and in failing to grant them relief pursuant to Code of Civil Procedure section 473, among other claims.

#### **STATEMENT OF THE FACTS AND CASE**

Homestead is a mobilehome park for senior citizens located in Santa Cruz, California. Appellants own an undivided 1/50 interest in the park as tenants-in-common with the other residents. Appellants own a mobilehome that sits on Space 47. Appellant Foresta is disabled, and requires a wheelchair for mobility. Appellant Prete is Foresta's live-in caregiver and Trustee of the Eleanor Foresta Special Needs Trust. Respondents Lillian Frazee and Ruth Dawkins are also co-owners of the park, and own a mobilehome that sits on Space 48, next door to appellants.

On July 16, 2005, appellants entered into escrow to purchase the mobilehome on Space 47. Prior to this date, appellants had met with Homestead representatives on at least two prior occasions, and did not discuss any modifications required to Space 47 as a result of appellant Foresta's disability.

On August 5, 2005, appellants met with Desmond Arthur, then President of the Board of Directors of Homestead, to discuss move-in issues. At this meeting, appellants allege Arthur represented that the land for Space 47 extended up to the cement on Space 48, the driveway of Space 47 could be extended to the cement on Space 48, and that Arthur would sign the permit to move the carport supports for Space 47 to the cement border of Space 48. Arthur, however, denies he made such representations. Arthur asserts Homestead's position is that the area between two individual spaces is subject to agreement between neighbors. With respect to the disputed area between Space 47 and 48, Arthur asserts he would approve of appellants' proposed changes if respondent Frazee, the next door neighbor, agreed. Frazee and Dawkins never agreed to appellants' proposed changes.

About a year later, on August 6, 2006, appellants requested that Homestead's clubhouse be brought into code compliance for wheelchair accessibility. On February 27, 2007, Homestead's attorney opined that the Americans with Disabilities Act (ADA) did not apply to Homestead's clubhouse. Despite this conclusion, Homestead agreed to consider the proposed changes to the clubhouse, and allocated funds for that purpose. Appellant Foresta agreed to oversee the improvements, and continued in that role until the complaint was filed in this case.

In June 2007, appellants requested alternative dispute resolution regarding the disputed area between Space 47 and Space 48. However, neither appellants nor Homestead could agree to the mediators proposed by the other side.

In September 2007, appellants filed a first amended complaint against Homestead and Frazee and Dawkins for the following 14 causes of action: (1) quiet title; (2) declaratory relief; (3) promissory estoppel; (4) intentional misrepresentation; (5) negligent misrepresentation; (6) trespass against Frazee; (7) trespass against defendant Does; (8) nuisance in the form of cat roaming and defecation; (9) violation of the Davis-Stirling Act for holding secret Board meetings; (10) violation of the Mobilehome Residency Law for making amendments to Homestead rules; (11) violation of the Davis-Stirling Act for making amendments to the Homestead rules; (12) preliminary and permanent injunction for each request of injunctive relief; (13) violation of the California Fair Employment and Housing Act for failing to provide reasonable accommodations; and (14) violation of the California Fair Employment and Housing Act for disability discrimination.

Homestead demurred to the complaint, and Frazee and Dawkins joined in the demurrer. Homestead also filed a motion to strike the attorney fees and punitive damages allegations. Appellants did not timely file an opposition to the motions, and instead filed

an ex parte application for a continuance of the motions. The court denied appellants' ex parte request.

Appellants filed their opposition to the motion on November 21, 2007, less than two court days before the hearing. The court heard arguments of counsel, and on November 27, 2007, it sustained Homestead's demurrer to the first, second, third, fourth, fifth, eighth, tenth, twelfth, thirteenth, and fourteenth causes of action without leave to amend. As to the ninth and eleventh causes of action, the court sustained the demurrer with leave to amend, and ordered appellants to file a second amended complaint no later than December 17, 2007. The court granted Homestead's motion to strike the attorney fees and punitive damages allegations stated in the complaint.

On December 18, 2007, after appellants failed to file a second amended complaint, Homestead filed an ex parte application for an order of dismissal and judgment. Santa Cruz County Superior Court Judge Burdick declined to rule on the application at that time, because he recognized he had a potential conflict based on his recent retention of Homestead's counsel in an unrelated matter. Judge Burdick eventually recused himself on January 14, 2008.

On January 7, 2008, appellants filed a motion for relief pursuant to Code of Civil Procedure section 473.

On January 24, 2008, Judge Robert Attack granted Homestead's motion for dismissal and judgment.

On February 1, 2008, appellants filed a motion for reconsideration regarding Homestead's motion to dismiss, and a motion to vacate the prior rulings of Judge Burdick based on his January 2008 recusal.

On February 14, 2008, Judge Attack entered judgment in favor of Homestead and Frazee and Dawkins, and denied appellants' motion for relief pursuant to Code of Civil Procedure section 473.

On March 12, 2008, appellants filed a motion to vacate judgment on the ground that judgment was entered in this case with motions pending.

On April 16, 2008, the court denied all of appellants' pending motions, and appellants subsequently filed a notice of appeal.

### **DISCUSSION**

Appellants assert the trial court erred in (1) sustaining Homestead's demurrer, dismissing the action, and granting judgment in favor of Homestead, Frazee and Dawkins; (2) granting Homestead's motion to strike attorney fees and punitive damages allegations; (3) denying appellants' motion for relief pursuant to Code of Civil Procedure section 473; and (4) failing to vacate the orders of the superior court, including the entry of judgment based on the former trial judge's recusal.

#### ***Demurrer to the Complaint***

Homestead filed a demurrer to the complaint as to all causes of action related to it; specifically, the first, second, third, fourth, fifth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth. Frazee and Dawkins filed a joinder to Homestead's demurrer; they did not file a separate demurrer. As a result, no demurrer was filed as to the sixth cause of action for trespass against Frazee, or the seventh cause of action for trespass, against Doe defendants.

The court sustained the demurrer without leave to amend as to all but the ninth and eleventh causes of action, to which it sustained the demurrer with leave to amend. After appellants failed to file a second amended complaint to cure the defects in the ninth and eleventh causes of action, the court dismissed the action, and entered judgment in favor of Homestead, Frazee and Dawkins.

On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all

material facts properly pleaded. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The court does not, however, assume the truth of contentions, deductions or conclusions of law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) “When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. (See *Hill v. Miller* (1966) 64 Cal.2d 757, 759.) And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. (*Kilgore v. Younger* (1982) 30 Cal.3d 770, 781; *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.) The burden of proving such reasonable possibility is squarely on the plaintiff. (*Cooper v. Leslie Salt Co.*, *supra*, at p. 636.)” (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318.)

With these standards in mind, we consider each of the causes of action alleged in the complaint.

### ***Quiet Title***

In the first cause of action, the first amended complaint seeks to quiet title to the disputed area between Spaces 47 and 48. Specifically, the first amended complaint alleges that appellants “seek a judicial determination that the leasehold interest of Space 47 includes and extends up to the cement border of Space 48, including the area between the driveway of Space 47 and the cement border of Space 48.” The first amended complaint further alleges that appellants’ interest in the disputed area arises from the oral representations made by Arthur regarding widening the driveway of Space 47 and moving the carport.

Because appellants’ action for quiet title is based on an allegation of an oral representation, it is barred by the Statute of Frauds, which requires that an interest in land must be evidenced by a writing. (Civ. Code, § 1624; *Kirkegaard v. McLain* (1962) 199

Cal.App.2d 484, 492.) Here, there is no writing incorporated by reference into the first amended complaint purporting to convey an interest in the disputed area between Spaces 47 and 48. As a result, the first cause of action fails to state a cause of action, and the demurrer was properly sustained without leave to amend.

### ***Declaratory Relief***

The complaint seeks declaratory relief related to the disputed space between Spaces 47 and 48. “A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the parties under a written instrument or with respect to property and requests that the rights and duties of the parties be adjudged by the court. [Citations.]” (*Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947.)

Here, neither of the two requests for declaratory relief set forth the existence of an actual controversy requiring adjudication. In the first request for declaratory relief, appellants seek a judicial determination that is the same as that requested in the first cause of action for Quiet Title, namely, that appellants hold the “leasehold interest of Space 47, including the area between the driveway of Space 47 and the cement border of Space 48.” This claim fails for the same reason stated above regarding the Quiet Title action, in that it is barred by the Statute of Frauds. (Civ. Code, § 1624.)

The second request of declaratory relief stated in the complaint seeks a judicial determination that Homestead “is required to maintain the driveway on Space 47 and to the cement border on Space 48.” Appellants cite no legal authority for this request. However, the Davis-Stirling Act, which is cited in the general provisions of the second cause of action, and provides support for other causes of action in the complaint, states: “unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common areas, *other than exclusive use common areas*, and the owner of each separate interest is

responsible for maintaining that separate interest and any exclusive use common area appurtenant to that separate interest.” (Civ. Code, § 1364 (a); emphasis added) Because this provision of law clearly states the parties’ requirements regarding maintenance of the driveway, there is no necessity of a judicial determination of the parties’ rights.

The trial court correctly granted Homestead’s demurrer without leave to amend as to the second cause of action.

***Promissory Estoppel, Intentional Misrepresentation and Negligent Misrepresentation***

The basis of the third, fourth and fifth causes of action for promissory estoppel, intentional misrepresentation, and negligent misrepresentation respectively, is that Arthur orally promised appellants that they could extend Space 47 to the cement border of Space 48, and that the carport supports in Space 47 could be moved to allow for wheelchair access to the backyard and garden of Space 47. The complaint alleges appellants relied to their detriment on this promise in purchasing the mobilehome on Space 47.

An essential element of these three causes of action is appellants’ actual reliance on Arthur’s representations (see, e.g., Rest. 2d Contracts, § 90 [promissory estoppel requires reliance by the party to whom a promise is made] *South Lake Tahoe Gas Co. v. Hofmann Land Improvement Co., Inc.* (1972) 25 Cal.App.3d 750, 765 [reliance is an element of intentional misrepresentation]; *Wilke v. Coinway, Inc.* (1967) 257 Cal.App.2d 126, 136 [in an action for negligent misrepresentation, the defendant’s assertion must induce the plaintiff to alter his position]). The complaint alleges that based on these representations, appellants agreed to purchase the mobilehome on Space 47. However, the complaint alleges appellants entered into escrow for the purchase of the mobilehome on Space 47 on July 16, 2005. Arthur’s oral representations regarding the area between Spaces 47 and 48 to appellants are alleged to have occurred on August 5, 2005, *after*



appellants had entered into a contract and were legally obligated to purchase their mobilehome.

Based on the complaint's allegations, appellants did not rely on Arthur's representations in purchasing the mobilehome on Space 47. The element of reliance being missing, the complaint fails to state causes of action for promissory estoppel, intentional misrepresentation, and negligent misrepresentation. The court properly sustained without leave to amend the demurrer to the third, fourth and fifth causes of action.

***Trespass against Frazee and Doe Defendants***

In the sixth and seventh causes of action, the complaint alleges Frazee and Doe defendants, respectively, trespassed on appellant's space within the mobilehome park. Specifically, the sixth cause of action alleges Frazee trespassed on appellant's property by "putting down rocks, removing walk boards, and watering the area between the driveway of Space 47 and the cement border of Space 48 so that the walk way was unsafe and so that water ran underneath the driveway on Space 47 and eroded the soil." The seventh cause of action alleges Does entered Space 47 and uprooted plants and vandalized an automatic sprinkler watering system. Neither of these causes of action for trespass cause of action was alleged against Homestead.

Here, Homestead filed a demurrer to all causes of action related to it; specifically, the first, second, third, fourth, fifth, eighth, tenth, twelfth, thirteenth, and fourteenth. As a result, Homestead *did not* demur to the sixth or seventh causes of action alleging trespass. In addition, Frazee and Dawkins joined in Homestead's original demurrer, and *did not* demur to the sixth or seventh cause of action. Finally, the order sustaining the demurrer does not include the sixth or seventh cause of action. Therefore, it was error for the court to dismiss the entire complaint, including the sixth and seventh causes of action and enter judgment in favor of Frazee.

As a result, the judgment must be reversed, and the matter must be remanded for the court to proceed on the sixth and seventh causes of action.

### ***Nuisance***

In the eighth cause of action, the complaint alleges nuisance arising from the roaming and defecation by cats on Space 47.

Liability for nuisance requires proof of interference with the plaintiff's use and enjoyment of property. (*See, e.g. San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 937.) In addition, nuisance requires proof that the invasion of the plaintiff's interest in the use and enjoyment of the land was substantial, i.e., that it caused the plaintiff to suffer " 'substantial actual damage,' " and that the interference is unreasonable. (*Id.* at p. 938.)

Appellant's allegations regarding the cat roaming and defecation are not sufficient to establish a cause of action for nuisance. Although the complaint states that the cat defecation "interfered with the comfortable enjoyment . . . for gardening and general use," the complaint does not allege how the defecation caused appellants to suffer substantial, unreasonable actual damage. Therefore, the demurrer was properly sustained as the eighth cause of action.

### ***Violations of the Davis-Stirling Act***

In the ninth and eleventh causes of action, the complaint alleges Homestead violated the Davis-Stirling Common Interest Development Act (Civil Code, section 1350 et seq.), which applies to governing bodies of common interest communities, such as Homestead, by holding secret Board meetings, and amending the rules of the association.

The ninth cause of action states that Homestead violated the Davis-Stirling Act when it "held secret meetings without informing [appellant Foresta] so that she could attend, when [it] denied and attempted to deny attendance by [appellant Prete], when [it] abused [appellants Foresta's] right to attend and speak by yelling at her, 'to leave,' 'to get

a life,' 'to sell' and 'shut up,' and when they denied [appellant Foresta] a copy of tape recorded minutes of the meetings.”

Similarly, in the eleventh cause of action, the complaint alleges Homestead “made amendments to the Covenants, Conditions and Restrictions of Homestead Park, without notice and consultation of the homeowners, including [appellants], and without proper vote for approval in violation of Civil Code Section 1355 and 1356 and the Declaration of Covenants, Conditions, Restrictions of the Homestead Park.”

The allegations as stated in both the ninth and eleventh causes of action are conclusory, and lack sufficient facts to establish a violation of the Act based on either the allegation that Homestead held secret meetings, or that Homestead amended the rules of the association without proper notice. For example, the Davis-Stirling Act does not require individual notice of board meetings; rather, only general notice is required, yet the complaint does not allege that Homestead failed to provide such general notice. (Civ. Code, § 1363.05, subd. (f).) In addition, there are no facts alleged to support the statement that Homestead denied appellant Prete access to any meetings, nor are there facts that appellant Foresta paid reimbursement to Homestead for the cost of tape recordings for the meetings, as is required under the Act. (Civ. Code, § 1363.05, subd. (b).)

Similarly, in the eleventh cause of action, while the complaint alleges Homestead amended the rules of the association without proper notice, it does not allege what specific rules were amended, or how they were changed.

Here, the trial court found the allegations in the ninth and eleventh causes of action lacked sufficient specificity to state a claim for violation of the Davis-Stirling Act, but that such lack of specificity could likely be cured with amendment. As such, the court properly sustained Homestead’s demurrer to the ninth and eleventh causes of action

with leave to amend, finding that “an amendment would probably cure the defects that have been identified.”

***Violation of Mobilehome Residency Law-Tenth Cause of Action***

The complaint alleged Homestead violated the Mobilehome Residency Law, found at Civil Code section 798.26. Specifically, the allegations are related to Homestead amending “Covenants, Conditions and Restrictions of the Homestead Park, without notice and consultation with homeowners, including [appellants] in violation of Civil Code section 798.26.”

The trial court properly sustained the demurrer to this cause of action without leave to amend. The Mobilehome Residency Law alleged to have been violated here, only applies to a “resident who *does not have* an ownership interest in . . . the resident-owned mobilehome park, in which his or her mobilehome is located or installed.” (Civ. Code, § 799.1, emphasis added). Here, as alleged throughout the complaint, appellants do own a share of Homestead. Therefore, the allegations in the tenth cause of action related to Civil Code section 798.26 do not apply to appellants, and as a result, the tenth cause of action does not state a valid claim.

***Preliminary and Permanent Injunction***

In the twelfth cause of action, appellants allege they are entitled to a preliminary and permanent injunction, because “it will be impossible for [appellants] to determine the amount of damages [appellants] will suffer if defendants’ damaging conduct is not restrained.”

In order to state a claim for an injunction, appellants must establish that they are entitled to the relief sought in the complaint, that such relief includes restraining the defendants, and that great or irreparable injury will occur without the issuance of an injunction. (Code Civ. Proc., § 526).

Here, the complaint fails to allege facts to support the elements of an injunction. Specifically, there are no allegations to support appellants' need to restrain Homestead, Frazee and Dawkins, or that they will suffer a great or irreparable injury absent an injunction. Therefore, the court properly sustained the demurrer as to the twelfth cause of action.

***Violation of the FEHA-Failure to Provide Reasonable Accommodations and Discrimination***

In the thirteenth and fourteenth causes of action, the complaint alleges Homestead violated FEHA by failing to provide reasonable accommodations, and engaging in discrimination against appellants based on Foresta's disability. Specifically, the complaint alleges Homestead failed to allow the widening of the driveway and movement of the carport of Space 47 to the cement border of Space 48 to provide wheelchair access for Foresta. In addition, the complaint alleges Homestead failed to provide wheelchair access to the clubhouse and laundry facilities in the park.

Initially, with regard to the allegations that Homestead violated FEHA for failing to provide a reasonable accommodation of allowing appellants to widen the driveway and move the carport of Space 47, appellants provide no legal authority for the proposition that FEHA requires the relinquishment of a private property right to provide a requested accommodation. Here, in order to accommodate appellants' request, Frazee and Dawkins would have to relinquish their property right in a portion of Space 48. In addition, the requested accommodation does not relate to a public accommodation, nor is it a housing accommodation under FEHA, which includes any "building, structure or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families." (Gov. Code, § 12927, subd. (d).)

The allegations related to the clubhouse and laundry facilities being inaccessible to wheelchairs in violation of FEHA are framed in the complaint as "code violations," that

are actually regulations of the Americans with Disabilities Act (ADA) found at 28 Code of Federal Regulations part 36, App. A (2003). However, the ADA regulations alleged to have been violated in failing to make the clubhouse and laundry facilities wheelchair accessible are inapplicable to Homestead, because the ADA regulations only apply to places of public accommodation. (42 U.S.C. § 12182.) The complaint does not allege that the clubhouse and laundry facilities are open to the public, nor can it, because the complaint also alleges these facilities are part of a mobilehome park that is privately owned by its occupants. (*See Jankey v. Twentieth Century Fox Film* (9th Cir. 2000) 212 F.3d 1159 [holding that the ADA does not apply to facilities unless they are, in fact, open to the public].)

Because the complaint fails to state a valid claim for violation of FEHA in the thirteenth and fourteenth causes of action, the court properly sustained the demurrer without leave to amend.

#### ***Motion to Strike Attorney Fees and Punitive Damages Allegations***

Appellants assert the trial court erred in granting Homestead's motion to strike the attorney fees and punitive damages provisions in the complaint without leave to amend.

With regard to the attorney fees allegations, the trial court granted the motion to strike, because the complaint did not establish that appellants were entitled to such fees by statute or agreement. (Code Civ. Proc., § 1021.5.) Specifically, the two statutory provisions alleged in the complaint that could provide for an award for attorney fees are inapplicable in the present case. The Mobilehome Residency Law as cited in the complaint, does not apply to appellants, because they are owners of a share of Homestead. (Civ. Code, § 799.1) In addition, the provision of the Davis-Stirling Act that provides for attorney fees relates to actions to enforce the covenants or rules of a common interest's association. Here, the complaint does not state an action to enforce the covenants or rules of Homestead's association. (Civ. Code, § 1354, subd. (c).)

Having no basis either in statute or by agreement, the complaint fails to state a claim for attorney fees, and the trial court properly granted Homestead's motion to strike.

Similarly, with regard to the allegations for punitive damages, the trial court granted Homestead's motion to strike because the complaint did not provide specific factual allegations that could support a claim for such damages. (*Perkins v. Superior Court* (1982) 117 Cal.App.3d 1, 6-7.) While the complaint makes blanket assertions that Homestead's conduct toward appellants was "despicable, malicious, oppressive," and "cruel," it provides no factual allegations to support these conclusions. Without specific factual support, the allegations of punitive damages in the complaint fail, and the trial court properly granted Homestead's motion to strike. (*Ibid.*)

***Motion for Relief Pursuant to Code of Civil Procedure section 473***

Appellants assert the trial court erred in denying its motion for mandatory relief under Code of Civil Procedure section 473 related to the court's sustaining Homestead's demurrer and granting the motion to strike.

Under the mandatory provisions of Code of Civil Procedure section 473, "the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties." (Code Civ. Proc., § 473, subd. (b)).

Here, appellants sought mandatory relief related to the court's sustaining Homestead's demurrer. The basis for appellants' argument that they were entitled to mandatory relief was that appellants' counsel failed to timely file an opposition to the demurrer and motion to motion to strike, and failed to file a motion to extend filing deadlines and continue the demurrer because counsel "mistakenly believ[ed] that . . . Homestead . . . was willing to mediate the border dispute."

In denying the motion for relief, the trial court relied on the reasoning of *Huh v. Wang* (2007) 158 Cal.App.4th 1406 (*Huh*), in which a panel of this court reviewed Code of Civil Procedure section 473, and found the mandatory provision "applies only [to relief sought in response] to defaults, default judgments or dismissals." (*Id.* at p. 1425.) This court in *Huh* followed the rationale of many other courts of appeal in California in holding that summary judgment motions do not fall within the purview of the mandatory relief provision. (*Ibid*; *See also, English v. IKON Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 143; *Vandermoon v. Sanwong* (2006) 142 Cal.App.4th 315, 320.)

Here, then trial court was correct in following the rationale in *Huh* to deny appellants relief under Code of Civil Procedure section 473. The relief appellants sought was related to the grant of Homestead's demurrer and motion to strike, not a "default[], default judgment[] or dismissal[]." (*Huh, supra*, 158 Cal.App.4<sup>th</sup> at p. 1425.) As a result, appellants were not entitled to mandatory relief pursuant to Code of Civil Procedure section 473, and the trial court did not err in denying the motion.

### ***Motions to Vacate the Court's Orders***

Appellants assert the trial court erred in denying their motion to vacate the trial court's orders, including the order sustaining the demurrer, the order requiring appellants to file a second amended complaint by a certain date, and ultimately, the dismissal and the entry of judgment in favor of Homestead, Frazee and Dawkins based on the previous judge's recusal.



Code of Civil Procedure section 170.3, subdivision (b)(4) provides the standard for vacating the previous rulings of a trial judge who had subsequently become disqualified as follows: “If grounds for disqualification are first learned of or arise after the judge has made one or more rulings in a proceeding, but before the judge has completed judicial action in a proceeding, the judge shall, unless the disqualification be waived, disqualify himself or herself, *but in the absence of good cause* the rulings he or she has made up to that time shall not be set aside by the judge who replaces the disqualified judge.” (Code Civ. Proc., § 170.3, subd. (b)(4), emphasis added.)

Other than to recite a procedural history of the case, appellants do not in any way establish good cause why Judge Burdick’s rulings prior to his recusal on January 14, 2008 should be set aside. Indeed, appellants state in their brief on appeal, “[h]ere this [*sic*] is no evidence of any culpability on Judge Burdick’s part . . . .” Yet, despite this admission, appellants continue to assert the orders prior to recusal should be vacated.

Of primary importance to appellants here is the fact that Judge Burdick retained Homestead’s counsel on December 7, 2007, and he executed the order sustaining Homestead’s demurrer on December 20, 2007. Appellants assert Judge Burdick became disqualified on December 7, and therefore, his execution of the order on December 20 was void. However, it is immaterial that Judge Burdick hired Homestead’s counsel on December 7, 2007, because he had already sustained Homestead’s demurrer prior to that date.

At the hearing on the motion to vacate, Judge Stevens considered these facts, and specifically found no good cause to suggest the November 27 ruling sustaining the demurrer and ordering appellants to file a second amended complaint by December 17, 2007 could not stand. Specifically, Judge Stevens held that execution of the December 20, 2007 order sustaining the demurrer reflected what Judge Burdick had

“previously unequivocally ruled in November.” Moreover, Judge Stevens found that when Judge Burdick executed the order on December 20, the sustaining of Homestead’s demurrer was already “a completed judicial act,” through the minute order on November 27, 2007. Therefore, the December 20, 2007 execution of the order sustaining Homestead’s demurrer is not void.

The trial court did not err in denying appellants’ motion to vacate the orders prior to Judge Burdick’s recusal. Appellants have produced nothing to establish good cause why Judge Burdick’s rulings prior to his disqualification should be vacated.

**DISPOSITION**

The judgment is reversed, and the matter is remanded to the trial court to proceed on the sixth and seventh causes of action in the first amended complaint.

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RUSHING, P.J.

WE CONCUR:

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ELIA, J.

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DUFFY, J.